XIHC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(25)

मामला क्रमांक M.A.(C) 986/ सन् 2007

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANTS:	1. Uday Singh, aged about 34 years, S/o Late Shri Jaipal Singh, R/o Village Semra, Tahsil Nawagarh District Janjgir-Champa (C.G.) **(OWNER OF THE VEHICLE)**
		2. Ram Pratap, aged about 26 years, S/o Shri Sakharam Sahu, R/o Village Semra, Tahsil Nawagarh District Janjgir-Champa (C.G.) **(DRIVER OF THE VEHICLE)**
		- Versus -
	RESPONDENTS/: (Claimants)	1. Gangotri Bai, aged about 35 years, Widow of Late Shri Vakku Kashayp;
		2. Ramla Bai, aged about 15 years, D/o Late Shri Vakku Kashayp;
		3. Kamla Bai, aged about 10 years, D/o Late Shri Vakku Kashayp;
		4. Jitendra, aged about 7 years, S/o Late Shri Vakku Kashayp;
		5. Dharmendra, aged about 5 years, S/o Late Shri Vakku Kashayp;
		6. Mukesh, aged about 2 years, S/o Late Shri Vakku Kashayp;
		Respondents No.2 to 6 are Minors, through their natural guardian mother Gangotri Bai and all are resident of Village Heeragarh, Police Station & Tahsil Nawagarh, District Janjgir (C.G.)
		7. National Insurance Company Limited, Branch Korba, Through: The Branch Manager, Kosabadi

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Chowk, Near Niharika Talkies, Korba, District Korba (C.G.) (INSURER)

(Appeal under Section 173 of the Motor Vehicles Act 1988)

Division Bench:

Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Sunil Kumar Sinha, JJ.

24-8-2007

Mr. V.K. Pandey, counsel for the appellants.

Heard.

Oral order dictated on Dais.

Sunil Kumar Sinha, J: -

This appeal is directed against the award dated 18-6-2007 passed by the 2nd Additional Motor Accidents Claims Tribunal, Janjgir in M.A.C.T. No.66/2007, whereby the Claims Tribunal has awarded a sum of Rs.3,92,000/- to the claimants along with interest at the rate of 6% per annum from the date of application till its realization.

This appeal has been filed by owner and driver of the offending vehicle, because it has been held by the Tribunal that all the non-applicants therein, including the appellants herein, shall be jointly and severally liable for payment of the said amount. It has been further directed that the amount shall be deposited by the Insurance Company in the first instance and the Insurance Company shall be entitled to recover the amount from the owner, because, a finding has been recorded in para 13 of the award that the vehicle was being driven in breach of the insurance policy.

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आदेश पत्रक (पूर्वानुबद्ध)

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The claim petition was filed by the claimants pleading that on 18-4-2006 deceased Vakku was travelling in matador No.CG-11/ZB-0187 along with other passengers which met with the accident. The deceased died on account of the said accident. Non-applicants No.1 & 2 therein, who are the appellants herein, have filed their written statement denying the claim presented by the claimants and pleaded that in fact, the matador was being taken for bringing articles of Barat from Village: Khera and the driver could not notice as to when the deceased boarded the matador and was travelling in the said vehicle. The Insurance Company took the plea that the offending vehicle was insured as a goods vehicle, whereas it was being used for carrying passengers, as the same was taking the Barat party, therefore, the Insurance Company would not be responsible for payment of the amount of compensation when a Barati has died in the accident.

Ram Kumar, whose son was married, has been examined as a witness in this case. He has deposed that the Barat of his son was going by the matador. He has admitted in cross-examination, as observed in para 11 of the award, that he had taken that vehicle, along with Baratis sitting therein, with an intention to bring goods from the place of marriage. The deceased was his close relative, therefore, he was also going in the Barat. He also admitted that he had taken the said matador on rent. The Tribunal has observed that the above version of the witness is supported by the records of the criminal case. It was also observed that against this evidence, driver & owner have only denied the factum of the accident and they have not given any explanation. Discussing the above evidence, the Tribunal has recorded a finding that on the date of accident, the offending vehicle (matador) was

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आदेश पत्रक (पूर्वानुबद्ध)

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carrying Baratis which met with an accident and it was a case in which the passengers were travelling on a goods vehicle which was registered and insured as a goods vehicle.

Learned counsel for the appellants argues that in fact, the deceased was not a passenger in the said vehicle. He also argued that the driver could not notice as to when the deceased climbed in the vehicle and was travelling by the said vehicle.

The above contention of learned counsel for the appellants cannot be accepted in view of the evidence of Ram Kumar, the marriage of whose son was taking place, and who had hired this matador for taking Barat of his son. He has categorically stated, as mentioned in para 11 of the award, that the Baratis were travelling in the matador at the time of accident, because the said matador was being taken by him for the purpose of bringing dowry articles from the marriage place.

We do not find any reason to disbelieve the evidence of this witness whose evidence is supported by the contents of documents of criminal case. This witness was working as a labour (hammal) in the said goods vehicle and taking advantage of this situation he had hired the vehicle on the condition of payment of diesel charges only, as has been observed by the Triubnal in para 10 of the award on the basis of evidence of driver itself.

Since the vehicle was insured as a goods vehicle and as per the material on record it was being used for carrying the passengers (Baratis), the Claims Tribunal has rightly recorded the finding that it was a case of breach of policy and in the said circumstances, the owner of vehicle was

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Soma	responsible for payment of compensation on account of the death of the deceased by committing breach of policy. Therefore, we do not find any merit in this appeal, same is liable to be dismissed and it is accordingly dismissed, in limine. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Sunil Kumar Sinha** **Judge**